

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3402 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ORIENTAL INSURANCE CO.LTD.

Versus

MOTIJI GANESHJI THAKOR

Appearance:

MR RK MISHRA for Appellant
MR SANJAY R PATEL for Respondent No. 1
MR JV JAPEE for Respondent No. 2
MS NIRALI B MUNSHI for Respondent No. 3

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 18/12/2001

ORAL JUDGEMENT

Heard Mr.R.K.Mishra, learned advocate appearing
on behalf of the appellant - Insurance Company, Mr.Sanjay
R. Patel, learned advocate for the respondent No.1,
Mr.J.V.Japee, learned advocate for the respondent No.2
and Ms.N.B.Munshi, learned advocate for the respondent
No.3.

2. The present appellant - Insurance Company has filed a Civil Application No.12296 of 2001 for seeking direction and considering the submissions made before me by the learned advocates, the said application was disposed of. The challenge of the the Insurance Company was in respect of the award passed by the Tribunal in favour of the claimant, while deciding the application of the claimant under no fault liability. The Insurance Company has challenged the award passed by Motor Accident Claims Tribunal, Himmatnagar dated 7/5/2001 below application Ex.1 and 14 in Motor Accident Claim Petition No.147 of 1999, wherein the Tribunal has allowed the application of the respondent - claimant directing the opponent to deposit a sum of Rs.25,000/-- with running interest at the rate of 9% P.A. from the date of the application. In the aforesaid application, the Insurance Company has highlighted the manner in which, the claim petition was filed before the Tribunal, wherein the application on behalf of the claimant was also filed claiming compensation under no fault liability. It is the case of the Insurance Company that the scooter in question is belonging to one of the employee of the Court and the said Scooter was involved earlier for more than five times within short span of six months. Accordingly, an application was filed even before the Tribunal for taking appropriate action and enquiry and it is the contention of the appellant Insurance Company that the Insurance Company has also moved the vigilance cell of the High Court in this respect and accordingly in the pending appeal, the aforesaid application was filed for seeking direction.

3. Mr.Mishra, learned advocate for the appellant has also while taking me through the record highlighted that even on behalf of the claimant, through learned advocate a purshis was filed for reducing the claim as well as for withdrawal of the claim petition. The Tribunal has not passed any order and disposed of the application under no fault liability, with a result that the Tribunal has passed an award in favour of the claimant under no fault liability. I have heard the learned advocates and I have also called for record and proceedings from the Tribunal. Accordingly by consent of learned advocates in the matter, I have fixed the appeal for final hearing and accordingly I have heard Mr.Mishra, learned advocate for the appellant, Mr.Sanjay Patel, learned advocate for the respondent No.1, Mr.J.V.Japee, learned advocate for the respondent No.2 and Ms.N.B.Munshi, learned advocate for the respondent No.3. I was taken through the application as well as order under challenge and the other documents

attached to the petition and I have also gone through the record and proceedings received from the Tribunal.

4. In the present case, it is found from the record that the application under Section 140 of the Motor Vehicles Act was filed by the respondent - Motiji Ganeshji Thakor, original claimant before the Motor Accident Claims Tribunal, Himmatnagar, highlighting that he met with an accident on 5th November, 1998 at 10.30 night Opp.Vaishali Cinema Road due to the negligence of opponent No.1, while driving scooter bearing No.GJ-9-D-8928 and in the said accident, he sustained injury and he sustained fracture on his hand, for which a complaint was filed before the Himmatnagar Taluka Police Station under C.r.No.I-437/1998. It is found that he has sustained permanent disability for which a claim of Rs.75,000/-was made. It is further found from the record that the claimant had filed an application under Order-33, Rule-1, 2 of the Civil Procedure Code that the claimant be treated as an indigent person and is not in a position to pay the requisite Court Fees. In the application of the claimant to prosecute his claim application, as indigent person the Tribunal has issued notice and the reply was filed by under the signature of District Government Pleader at Ex.9 denying the case put forward by the claimant that he is an indigent person. From the record, I do not find any order passed by the Tribunal on application filed by the respondent claimant for prayer under Order-33, Rule-1, 2 of the Civil Procedure Code. Ex.11 is the list of documents relied upon by the respondent claimant, wherein seven documents were produced namely, the complainant filed in respect of the accident, the panchnama of the scene of offence, xerox copy of the certificate showing the injury as well as the original certificate of disablement sustained by the claimant, copy of the chargesheet, xerox copy of the registration of the vehicle involved in the accident and xerox copy of the licence of the driver. The claimant has filed application under Section 140 of the Motor Vehicles Act being Motor Accident Claims Petition No.147 of 1999 and on behalf of the appellant - Insurance Company, a written statement was filed on 17th February, 2001, which is at Ex.30, opposing the claim application of the claimant. An application Ex.14 was submitted before the Tribunal on 23rd April, 2001 through advocate highlighting that looking to the disability sustained by the claimant, the claimant is likely to get Rs.25,000/-and accordingly a request for reducing the claim from Rs.75,000/-- to Rs.25,000/-- was made and further found that the claimant has also agreed to pay necessary Court Fees Stamp on the said claim. On going

through the order under challenge passed by the Tribunal below Ex.1 and 14, it is found that the Tribunal has allowed the application and directed the opponent to deposit Rs.25,000/-- with running interest at the rate of 9% P.A. from the date of the application within a period of one month from the date of order and observed that the Tribunal will pass necessary orders regarding the disbursement of the said amount. Mr.Mishra, learned advocate appearing on behalf of the appellant has vehemently urged that, the claimant had claimed Rs.75,000/-- from the opponent, including the Insurance Company and also filed application praying for permitting him to withdraw the amount. During the pendency of the application, after filing the written statement on behalf of the Insurance Company, the claimant through his advocate has filed purshis praying for reduction of his claim from Rs.75,000/-- to Rs.25,000/--. When the application for reduction of claim was heard by the Tribunal, the Tribunal has allowed the application by observing that Insurance Company has no objection for reducing the claim for which the endorsement was made by the advocate on behalf of the Insurance Company at Ex.14. It is further found from the record that on behalf of the respondent - claimant application Exh.3 was submitted before the Tribunal claiming compensation under no fault liability under Section 140 of the Motor Vehicles Act. The said application was submitted on 30th January, 1999. It is found from the record that in the order under challenge the reference is made regarding application Ex.3 filed by the respondent claimant. However, it is further found from the record that on the said application no order has been passed and the order is passed by the learned Tribunal below Ex.1 and 14. The Tribunal has, as per order dated 30th January, 1999, allowed the application of the claimant being C.M.A.No.76 of 1999, subject to the objection and issued notice to the District Government Pleader. The written statement Ex.13 filed by the Insurance Company shows that the written statement was filed in main claim petition being Motor Accident Claims Petition No.147 of 1999, denying the case put forward by the claimant regarding accident as well as the amount of compensation claimed by the claimant. In para-16 of the written statement, it is specifically contended by the Insurance Company that the reply is filed in the main petition and the same be treated as a part of the reply to the application filed by the claimant under Section 140 of the Motor Vehicles Act. The operative order passed of the Tribunal indicates that the Tribunal has disposed of the application Ex.3 namely the application filed by the claimant under Section 140 of the Motor Vehicles Act and

the Tribunal has observed that the necessary direction be issued by the Tribunal for disbursement of the amount.

5. Mr.Sanjay Patel, learned advocate appearing on behalf of the respondent - claimant under the instructions from his client has fairly stated that the order passed by the Tribunal under no fault liability is required to be set aside. However, it is his contention that necessary direction be given to examine the claim of the claimant in respect of which the claim application was filed by the claimant claiming compensation as Rs.25,000/--. Considering the stand taken by the respondents, the order passed by the Tribunal below application Ex.3 on no fault liability is set aside. The amount awarded by the Tribunal under no fault liability is also set aside. However, the Tribunal is directed to examine the main claim petition in respect of the claim of the claimant claiming Rs.25,000/-- and to decide the same in accordance with law.

5. With these observations, this appeal is disposed of. The office is directed to sent back the record and proceedings forthwith to the Tribunal.

(D.K.Trivedi, J.)

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